

Campaign Finance Reform Committee Report to the Milpitas City Council

The Campaign Finance Reform Committee is honored to present our recommendations to the Milpitas City Council for their review and approval.

The Committee was formed by the Milpitas City Council and appointed Bill Ferguson, Lokesh Krishnarajpet, Martha Lamdin, Rajeev Madnawat, Syed Mohsin, Bob Nunez, Althea Polanski, Marty Riker, and Rohit Sharma. The Committee has been supported by the Milpitas City Clerk and Milpitas City Attorney.

The first meeting was held on February 19, 2015 and voted Althea Polanski as Chair and Bill Ferguson as Vice Chair. Through September 2015, the Committee has met seven (7) times.

Mayor Esteves attended the first meeting of the Committee to share the purpose and objectives of the Committee and to answer questions. The City Attorney provided an overview and briefing for the Committee.

The Committee was charged with reviewing the current campaign ordinance and providing recommendations to the Milpitas City Council on any changes that may be relevant to ensure the electoral process in Milpitas would be fair, transparent, and open for voters to make informed decisions when casting a ballot.

The Committee reviewed the current ordinance and was also provided with a briefing by the City Clerk of the official forms that candidates and committees are required by law to submit as well as timelines. The Committee was also provided with information on past election contributions and expenditures as well as a sampling of completed forms.

The Committee brainstormed areas including 'what is broken', 'what is working', and 'ideas' to improve the campaign ordinance. The Committee formed three (3) subcommittees around the areas of Disclosure/Enforcement, Time and Financial Limits, and Campaign Reform.

The process was very open and collaborative with all of our meetings open to the public.

The recommendations include a voluntary contribution CAP for candidates, an election season, additional disclosures, restrictions on accepting contributions from companies with pending projects or contracts with the City of Milpitas, donor reporting disclosures, electronic filing, and seeking input on district/seat elections.

The following provides the detail for the recommendations and committee members will be present to answer questions.

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Recommendation 1: Voluntary Total Contribution CAP for mayoral and council candidates

The committee is recommending a voluntary CAP of \$20,000 for mayoral candidates and \$15,000 for council candidates. The candidate agreeing to the voluntary CAP would sign a declaration affirming their adherence to the voluntary CAP. (Per city attorney, committee may want to add an escalation/inflation/cost of living formula.)

The voluntary CAP is utilized in other cities. A voluntary CAP will hopefully provide candidates a more equal opportunity to raise funds and get their message out to the registered voters. Fundraising can be time consuming and may be perceived by some as an advantage for incumbents.

From Santa Clara:

Beginning in 2014, the contribution limits established in this section shall be adjusted on an annual basis by a percentage equal to the Consumer Price Index for All Urban Consumers for the San Francisco Bay Area (CPI). The adjustment to the contribution limits shall be by City Council resolution adopted at least six months prior to each election. The adjustment shall be rounded off to the nearest ten dollar (\$10.00) figure [downward (if four dollars ninety-nine cents (\$4.99) or less) or upward (if five dollars (\$5.00) or more)].

Recommendation 2: Incentive for Adhering to Voluntary Contribution CAP

The committee is recommending adding a diamond symbol on the ballot for candidates agreeing to a voluntary contribution CAP as well as a brief explanation of what the symbol means. The Santa Clara County Register of Voters has used this for other cities.

The committee is also recommending using the diamond symbol and explanation on the City website, press releases or advertisements that list candidates.

Recommendation 3: Date to Begin Accepting Contributions

The committee is recommending an election “season” for City of Milpitas elections and recommends no contributions could be received by any candidate six months prior to the date of the election. A specific date is not specified as there may be special elections, primaries, etc.

The committee discussed that there would be no need to accept donations until a person files to run for the elected office. It would be a defined election period to ensure those who already hold office are concentrating on their sworn duties and not seeking donations.

It was noted that it is easier to buy influence or votes if there is not a defined election period or season. It should be noted that the emphasis on money does indeed have a corrupting influence on politics. Campaign contributions are, in practice, not much different from bribes. Candidates are “bought” by their contributors and, in carrying out the duties of their office, they respond to contributors’ wishes at the expense of other constituents and the public interest. Also, there is the potential for an elected official to extract contributions from individuals and groups who have no desire to contribute but fear that the official will take actions unfavorable to them if they do not contribute.

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From SJ Ordinance:

It is the intent of the city council of the City of San José in enacting this chapter to place realistic and enforceable limits on the amount individuals and independent committees may contribute to political campaigns in municipal office elections for the purpose of preventing the perception by the public that campaign contributors exercise undue or improper influence over elected officials. In order to achieve this purpose it is not necessary to, nor is it the city council's intent to, impose limitations on individuals and committees whose sole objective is the passage or defeat of ballot measures.

Any contribution which is received outside of the campaign contribution period for an election shall not be accepted or deposited but shall be returned to the contributor or donor within five business days.

From: Santa Clara:

2.130.030 Purpose of this chapter.

This chapter is to be liberally construed to effectuate the following purposes:

- (a) Ensure that individuals and interest groups in the city have a fair opportunity to participate in the municipal elective and governmental processes.
- (b) Reduce the influence of large contributors with a specific financial stake in matters before the City Council, thus countering the perception that decisions are influenced more by the size of contributions than the best interests of the people of the City.
- (c) Encourage candidates to limit their overall expenditures in campaigns, thereby reducing the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters.
- (d) Increase the value of smaller contributions to candidates.
- (e) Reduce the fund raising advantage of incumbents and thus encourage competition for elective office.
- (f) Allow candidates and officeholders to spend a lesser portion of their time on fund raising and a greater portion of their time dealing with issues of importance to their constituents.
- (g) Improve the disclosure of contribution sources in reasonable and effective ways.
- (h) Help restore public trust in governmental and electoral institutions. (Ord. 1745 § 2, 1-11-00; Ord. 1924 § 1, 4-22-14).

Recommendation 4: Date to Stop Collecting Contributions

The committee is recommending no contributions be received by any candidate after the close of polls on the specified day of an election. A candidate may contribute as necessary to fulfill any outstanding obligations for his/her campaign committee. The candidate can contribute to his or her own campaign after election day, up to the termination of the committee

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Any contributions received after this date would need to be returned to the donor and cannot be deposited into the candidate's campaign committee.

The committee sees no reason to continue accepting contributions as the period for campaigning has ended and it will no longer interfere with any constitutional rights an individual may have in contributing to a candidate.

Recommendation 5: Campaign Committee Termination

The committee is recommending all campaign committees be terminated no later than 90 days after the date of the election. If there are funds remaining in the campaign committee, these funds will be disbursed to a Milpitas non-profit.

From SF Ordinance:

SURPLUS FUNDS. Surplus funds held by a candidate or committee shall be:

- (A) returned on a "last in, first out" basis to those persons who have made said contributions;
- (B) donated to a charitable organization;
- (C) donated to the City and County of San Francisco;
- (D) used to pay outstanding campaign debts or accrued expenses;
- (E) used to pay expenses associated with terminating the committee, such as bookkeeping, legal fees, preparation of campaign statements, and audits; or

Recommendation 6: Additional Contributor Disclosures

The committee is recommending additional disclosures beyond the requirements by the state. This would necessitate an additional "City" form for campaigns to complete and file with the Milpitas City Clerk.

The candidate would request donors to answer the following question and the answer of yes or no would be included on the new form: *Are you aware of any contracts or projects with the City of Milpitas by you or your employer?*

Restriction included in Santa Clara:

No contribution shall be deposited into a campaign checking account unless the name, address, occupation and employer of the contributor is on file in the records of the recipient of the contribution.

Recommendation 7: Restrictions for Projects Pending before the City of Milpitas

The committee recommends that no contributions may be received from a company or the officers of the company that has projects pending before the City of Milpitas within six (6) months of an election.

Recommendation 8: Restrictions for Contracts with the City of Milpitas

The committee recommends that no contributions may be received from a company or the officers of the company that has a contract with the City of Milpitas.

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Recommendation 9: Donor Reporting Disclosures

Currently, the Milpitas City Clerk provides an advertisement listing all donors over \$100 in the Milpitas Post the Friday prior to the election date.

The committee is recommending doing two advertisements during an election cycle.

The first advertisement would be after the first pre-election filing and the second advertisement after the second pre-election filing is completed. The second advertisement would list only new donors not reported during the first pre-election filing.

The committee is also recommending adding the name of the employer of the donor and posting this information on the City's website for all contributions over \$100.00.

Recommendation 10: Electronic Filing

The committee is recommending electronic filing of campaign reports which would include the ability for a citizen to be able to do searchable data of the reports. It is believed this would provide the citizens more accessibility to campaign reports that would be user friendly especially since Milpitas is in the heart of Silicon Valley.

The Milpitas City Clerk shared there are 2 vendors authorized at this time in the state to allow for electronic filing and a monthly fee is charged. It should also be noted there are not as many reports filed through the City as there are in other jurisdictions that currently utilize electronic filing. It would be important to review the costs to the City and benefits to the residents.

From SJ Ordinance:

12.06.915 Electronic campaign disclosure.

A. Each candidate, candidate controlled committee and independent committee that is required to file campaign disclosure statements by Chapter 12.06 or the Political Reform Act must file at the same time a copy of the statement in an electronic format with the city clerk, provided the city clerk has prescribed the format at least sixty days before the statement is due to be filed.

B. Once a candidate or committee is subject to the electronic filing requirements imposed by this section, the candidate or committee will remain subject to the electronic filing requirements until the candidate or committee files a termination statement pursuant to Chapter 12.06 and the Political Reform Act.

C. The requirements of this section do not abrogate any requirements in Chapter 12.06 or the Political Reform Act that paper copies be filed.
(Ord. 28678.)

Recommendation 11: District/Seat Elections

The committee is recommending the Milpitas City Council do a survey and/or public outreach to see if the citizens of Milpitas would like district or seat elections. The committee is aware of a new law requiring cities over 100,000 in population to go to district elections. The committee feels that looking at the various issues now may be prudent to discuss as the City continues to increase in population.

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The committee believes this may be inevitable in the future. There are many pros and cons to dividing a city into districts for council member elections including the possibility of lowering the costs of campaigning, etc.

Recommendation 12: Penalties for Violating Campaign Ordinance

The committee is recommending a number of enforcement mechanisms for violating the City of Milpitas campaign ordinance. It would be a private right of action on all aspects of the ordinance.

If a candidate goes over the voluntary CAP during the election period, the candidate would be sent a 15-day notice by the City to return funds to the donors by a date certain. If the candidate does not comply, the penalty would include returning the amount over the voluntary CAP plus three times the amount to the City of Milpitas or a Milpitas non-profit.

Penalties would be applied in relationship with the seriousness of the offense. For serious or intentional violations of the ordinance, the penalty would be disqualification from holding the office and prohibition from running for office for 10 years. If the violation has a material effect on the election, the candidate shall suffer loss of office.

Any resident of Milpitas would have standing to file a suit on behalf of the voters of Milpitas. After filing a complaint with the City of Milpitas, the city has 90 days to respond to the petitioner. If the city does not take action, then the resident can file an enforcement suit. Attorney fees would be awarded to the prevailing party.

Excerpts from Santa Clara:

Article IV. Voluntary Expenditure Limits

2.130.160 Candidate acceptance or rejection of expenditure limits.

(a) Each candidate for City office shall file a "Declaration of Candidacy Statement" ("Declaration") which shall be in a form to be determined by the City Clerk before that candidate accepts any campaign contributions. At the time of filing his/her declaration, the candidate shall indicate on the Declaration his/her acceptance or rejection of the voluntary expenditure limit of twenty-five thousand dollars (\$25,000.00 – the base was established in February, 2000), which, beginning in 2014, shall be adjusted on an annual basis solely by a percentage equal to the San Francisco Bay Area All Urban Consumer Price Index (CPI). The adjustment to the voluntary expenditure limit shall be by City Council resolution adopted at least six months prior to each election. The adjustment shall be rounded off to the nearest hundred dollar (\$100.00) figure [downward (if forty-nine dollars ninety-nine cents (\$49.99) or less) or upward (if fifty dollars (\$50.00) or more)].

(b) For candidates accepting the voluntary expenditure limits, the following advantages apply:

(3) The sample ballot shall contain a designation that the candidate was a participant in the voluntary expenditure limit program.

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(4) The candidate's name shall be listed in a newspaper of general circulation indicating they have been a participant in the voluntary expenditure limit program.

(5) The candidate's participation in the voluntary expenditure limit program shall be disseminated for public information on the City's website, government access cable television channel, public libraries, public offices, etc.

(c) A candidate who agrees to accept the voluntary expenditure limit in this article may not change that decision, except where an opposing candidate files a statement of rejection of the voluntary expenditure limit, the candidate may rescind his/her acceptance of the voluntary expenditure limit within seventy-two (72) hours of the final date that nomination papers can be filed;

Article VI. Enforcement

2.130.190 Penalties for violation of this chapter.

Pursuant to SCCC 1.05.070, the enforcement of violations of the provisions of this chapter may be prosecuted as an infraction or misdemeanor.

(a) Infraction/Misdemeanor. Any person who violates any of the provisions of this chapter shall be guilty of an infraction and/or misdemeanor.

(b) Prosecution. Every violation of this chapter shall be a misdemeanor; provided, however, that where the prosecutor has determined that such action would be in the best interest of justice, the prosecutor may specify in the accusatory pleading or citation, that the violation shall be prosecuted as an infraction.

(c) Penalty for Infraction. Each and every violation of this chapter which is deemed an infraction is punishable by a fine not exceeding two hundred fifty dollars (\$250.00).

(d) Penalty for Misdemeanor. Each and every violation of this chapter which is deemed a misdemeanor is punishable by a penalty of not more than one thousand dollars (\$1,000.00), or by imprisonment in the City or County jail for a period of not exceeding six months, or by both penalty and imprisonment. (Ord. 1924 § 1, 4-22-14).

2.130.200 Civil actions.

(a) Any person who intentionally or negligently violates any provision of this chapter shall be liable in a civil action brought by a person residing within the city for an amount not more than three times the amount of the unlawful contribution or expenditure.

(b) If two or more persons are responsible for any violation, they shall be jointly and severally liable.

(c) In determining the amount of liability, the court may take into account the seriousness of the violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action, the plaintiff shall receive fifty percent (50%) of the amount recovered. The remaining fifty percent (50%) shall be deposited into the general fund of the City. In an action brought by the District Attorney, the judgment shall be paid to the general fund of the County of Santa Clara.

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(d) No civil action alleging a violation of any provision of this Act shall be filed more than two years after the date the violation occurred.

(e) The provisions of SCCC 2.130.240, Effect of violation on outcome of election, shall apply. (Ord. 1745 § 2, 1-11-00; Ord. 1924 § 1, 4-22-14. Formerly 2.130.190).

2.130.210 Injunctive relief.

Any person residing in the City may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this chapter. (Ord. 1745 § 2, 1-11-00; Ord. 1924 § 1, 4-22-14. Formerly 2.130.200).

2.130.220 Cost of litigation.

The court may award to a plaintiff or defendant who prevails in any action authorized by this chapter, costs of litigation, including reasonable attorneys' fees. (Ord. 1745 § 2, 1-11-00; Ord. 1924 § 1, 4-22-14. Formerly 2.130.210).

2.130.230 Disqualification.

In addition to any other penalties prescribed by law, if an official receives a contribution in violation of this chapter, the official shall not be permitted to make, participate in making or in any way attempt to use his/her official position to influence a governmental decision in which the contributor has a financial interest. The provisions of Government Code § 87100 et seq., and the pertinent regulations of the Fair Political Practices Commission (Title 2, Division 6, Chapter 7 (entitled "Conflicts of Interest" – Section 18700 et seq.)) shall apply to interpretations of this section. (Ord. 1745 § 2, 1-11-00; Ord. 1924 § 1, 4-22-14. Formerly 2.130.220).

2.130.240 Effect of violation on outcome of election.

If a candidate is found by a court (or jury) to have violated any provision of this chapter, the court shall make a determination as to whether the violation had a material effect on the outcome of the election. If the court finds the violation did have a material effect on the election, the following shall apply.

(a) If the court determination becomes final before the date of the election, the votes for such candidate shall not be counted and the election shall be determined on the basis of the votes cast for the other candidates in that race;

(b) If the court determination becomes final after the date of the election, and if such candidate was declared to have been elected, then such candidate shall not assume office, the office shall be deemed vacant and shall be filled as otherwise provided in the City Charter and City Code;

(c) If the court determination becomes final after the candidate has assumed office, then the candidate shall be removed from office, the office shall be deemed vacant and shall be filled as otherwise provided in the City Charter and City Code;

(d) The court may determine the candidate shall be ineligible to hold any elective City office for a period of four years after the date of such court determination that a violation occurred;

(e) In a criminal proceeding, a plea of nolo contendere shall form the basis for a court determination of the impact of the violation of this chapter. (Ord. 1745 § 2, 1-11-00; Ord. 1924 § 1, 4-22-14. Formerly 2.130.170).

2.130.250 Right to cure violation.

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A candidate or candidate controlled committee that accepts a contribution in violation of this chapter shall not be penalized, if the candidate or candidate controlled committee returns the contribution or contributes it to the City general fund or to a charitable organization within seven days of its receipt. (Ord. 1924 § 1, 4-22-14).